

**Swing Staging, Inc., Swing Staging Bridging, Inc.
and Local 282, International Brotherhood of
Teamsters, AFL-CIO.**¹ Case 29-CA-15756

December 26, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

On July 18, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent Swing Staging, Inc. (individually Respondent Swing) and the Respondent Swing Staging Bridging, Inc. (individually Respondent Bridging) (collectively the Respondents) have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Cases 29-RC-7654 and 29-RC-7662, respectively. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer admitting in part and denying in part the allegations in the complaint.

On November 22, 1991, the General Counsel filed a Motion for Summary Judgment. On November 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In the answer the Respondents admit their refusal to bargain, but attack the validity of the respective certifications on the basis of the objections to the election in the representation proceedings.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceedings. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceedings. Although Respondent Bridging contends in its opposition to the Motion for Summary Judgment that it has recognized the Union and commenced bargaining and intends to amend its answer accordingly, the answer has not, in fact, been amended, and the respective

allegations in the complaint stand admitted. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Swing, a New York corporation, with its principal office and place of business located at 34-01 Starr Avenue, Long Island City, Borough of Queens, City and State of New York, has been engaged in the rental of suspended scaffolding equipment to building maintenance contractors. During the year ending July 18, 1991, it has, in the course and conduct of its operations, performed services valued in excess of \$50,000 for various enterprises located in States outside the State of New York. Respondent Bridging, a New York corporation, with its principal office and place of business located at 52-15 Van Dam Street, Long Island City, Borough of Queens, City and State of New York, has been engaged in erection and removal of pedestrian sidewalk protection structures for commercial buildings. During the year ending July 18, 1991, in the course and conduct of its operations, it has performed services valued in excess of \$50,000 for various enterprises located in States outside the State of New York. We find that Respondent Swing and Respondent Bridging are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 3, 1990, the Union was certified on March 4, 1991, as the collective-bargaining representative of the employees in the following appropriate unit of Respondent Swing's employees:

All full-time and regular part-time mechanics, field and warehouse laborers, riggers and drivers employed by Respondent Swing, at its premises located at 34-01 Starr Avenue, Long Island City, New York, excluding all office clerical employees, salesmen, supervisors and guards as defined by the Act.

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

The Union continues to be the exclusive representative of these employees under Section 9(a) of the Act.

Following the election held August 3, 1990, the Union was certified on March 4, 1991, as the collective-bargaining representative of the employees in the following appropriate unit of Respondent Bridging's employees:

All full-time and regular part-time mechanics, field and warehouse laborers, installers, and drivers employed by Respondent Bridging, at its premises located at 52-15 Van Dam Street, Long Island City, New York, excluding all office clerical employees, supervisors and guards as defined by the Act.

The Union continues to be the exclusive representative of these employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since May 9, 1991, the Union has requested the Respondents to bargain and, since May 20, 1991, the Respondents have refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after May 20, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the respective Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that:

A. Respondent Swing Staging, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 282, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanics, field and warehouse laborers, riggers and drivers employed by Respondent Swing Staging, Inc., at its premises located at 34-01 Starr Avenue, Long Island City, New York, excluding all office clerical employees, salesmen, supervisors and guards as defined by the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix A."² Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent Swing Staging Bridging, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 282, International Brotherhood of Teamsters, AFL-CIO, as the

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by order of the National Labor Relations Board" shall read "Posted pursuant to a judgment of the United States Court of Appeals enforcing an order of the National Labor Relations Board."

exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanics, field and warehouse laborers, installers, and drivers employed by Respondent Swing Staging Bridging, Inc., at its premises located at 52-15 Van Dam Street, Long Island City, New York, excluding all office clerical employees, supervisors and guards as defined by the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix B."³ Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ See fn. 2, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 282, International Brotherhood of Teamsters, AFL-CIO

as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time mechanics, field and warehouse laborers, riggers and drivers employed by Respondent Swing Staging, Inc., at its premises located at 34-01 Starr Avenue, Long Island City, New York, excluding all office clerical employees, salesmen, supervisors and guards as defined by the Act.

SWING STAGING, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 282, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time mechanics, field and warehouse laborers, installers, and drivers employed by Respondent Swing Staging Bridging, Inc., at its premises located at 52-15 Van Dam Street, Long Island City, New York, excluding all office clerical employees, supervisors and guards as defined by the Act.

SWING STAGING BRIDGING, INC.